

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on March 4, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: Rep. Michael Lange (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 112, 172, 181, 2/25/2005
Executive Action: SB 172, 181-Tabled, SB 30, 67-Be
Concurred In, SB-166 Be Concurred
In As Amended

HEARING ON SB 181

Sponsor: SEN. DONALD STEINBEISSER, SD 19, SIDNEY

Opening Statement by Sponsor:

SEN. DONALD STEINBEISSER (R), SD 19, opened the hearing on **SB 181**, Revise agisters, service, towing, storage lien law.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 35}

Proponents' Testimony:

Bob Gilbert, Montana Tow Truck Association, informed the committee that each county in Montana varies from one county to the next as to what is required or allowed to be removed from a towed vehicle.

{Tape: 1; Side: A; Approx. Time Counter: 35 - 67}

Jim Dusenberry, J & D Towing, Montana Tow Truck Association, rose in support of SB 181 and spoke to the committee about the differences from county to county when tow truck operators are faced with towing vehicles.

[**EXHIBIT\(juh48a01\)**](#)

[**EXHIBIT\(juh48a02\)**](#)

[**EXHIBIT\(juh48a03\)**](#)

[**EXHIBIT\(juh48a04\)**](#)

{Tape: 1; Side: A; Approx. Time Counter: 67 - 108}

Tom McGree, Milo's Towing Company, rose to support SB 181 and stated that this is "one more tool" for tow truck operators.

{Tape: 1; Side: A; Approx. Time Counter: 108 - 134}

Leroy Matthews, Crash Repair, rose in support of SB 181.

{Tape: 1; Side: A; Approx. Time Counter: 134 - 145}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. WARD spoke with Mr. Dusenberry about the proposed amendments.

REP. MCGILLVRAY questioned Mr. Dusenberry about the junk vehicle fees and why the tow truck operators continue to stay in business while losing money.

Mr. Dusenberry replied that the paperwork and the number of times a junk vehicle must be towed all add to the cost of doing business. He stated that the vehicle is towed the initial time and then to a sheriff's sale which is costly, especially when the vehicle is not worth very much.

REP. STOKER continued with the questioning of Mr. Matthews. The REPRESENTATIVE was interested in what regulations there are for the removal of items from vehicles and what the fees are for towing these vehicles. **Mr. Matthews** stated that any salvageable items such as batteries or alternators are key items that can be salvaged. The amount of fees charged for towing ranges from \$100 to \$300.

REP. NOENNIG queried Mr. Gilbert about the reason why tow truck operators continue to stay in business if they are constantly losing money in this business endeavor. **Mr. Gilbert** replied that if they are in the "rotation," they are required to take law enforcement's calls when a vehicle needs to be towed.

They continued their conversation regarding the storing, keeping and/or repairing of the vehicles once in the care of the tow truck operators. **REP. NOENNIG** was interested in the sale of the salvageable items and what, if any, monies go back to the owner of the vehicle after these items are sold. **Mr. Matthews** informed the committee that after any items are sold and the towing fees are paid for out of that money; the leftover money does go back to the owner of the vehicle.

REP. KOOPMAN began his questioning of Mr. Gilbert. The REPRESENTATIVE wanted to know about the items left in the cars; i.e., money, firearms, financial records, etc. He asked, "...could the tow truck operator keep any of those items?" **Mr. Gilbert** replied that the Montana Highway Patrol would take control of the firearms until the resolution of the situation and money or financial records would not be allowed to be kept.

REP. CLARK spoke with Mr. Dusenberry about the idea that tow truck operators will have to go into the "pawn shop" business if this bill were to pass due to all of the salvaged items the tow truck operators would have from the vehicles. **REP. CLARK** then questioned Mr. Dusenberry about the fees collected from the totaled vehicles in the "junk yards." **Mr. Dusenberry** responded by saying that the tow truck operators receive \$25 a ton for crushed vehicles.

REP. HARRIS asked Mr. Dusenberry about the "rotation" in which the tow truck operators are obliged to belong.

REPS. WARD and **BECKER** both related to the committee individual stories that they had been involved in regarding the value of service that tow truck operators provide.

REP. MCGILLVRAY asked Mr. Gilbert about the time lapse from when the vehicle is towed and when the vehicle is sold. **Mr. Gilbert** replied, "...there is no requirement within the Agister's Law; therefore, the time frame is usually 60-90 days."

{Tape: 1; Side: A; Approx. Time Counter: 145 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 128}

Closing by Sponsor:

SEN. STEINBEISSER closed the hearing on SB 181.

{Tape: 1; Side: B; Approx. Time Counter: 128 - 130}

HEARING ON SB 112

Sponsor: **SEN. DAN HARRINGTON, SD 38, BUTTE**

Opening Statement by Sponsor:

SEN. DAN HARRINGTON (D), SD 38, opened the hearing on **SB 112**, Revise guardianship law.

The **SENATOR** explained to the committee members that SB 112 would allow the legal guardian of an individual (who is usually elderly and/or incapacitated) to be legally separated or divorced from a spouse who no longer provided for that person.

SEN. HARRINGTON related a story to the committee about the elderly woman in a Flathead Nursing Home who was to be evicted due to nonpayment of care for her. He stated that the husband lived out of state, refused to pay for her care and refused to allow her to apply for Medicaid, which left no alternative but for the nursing home to begin eviction proceedings.

{Tape: 1; Side: B; Approx. Time Counter: 130 - 213}

Proponents' Testimony:

Rick Bartos, director of Adult Protective Services, Department of Public Health and Human Services (DPHHS), spoke in strong support of SB 112. He explained the language from Page 3, Lines 18-25 that specifies what SB 112 will provide.

{Tape: 1; Side: B; Approx. Time Counter: 213 - 330}

Anita Roessmann, Montana Advocacy Program, spoke to the committee about the "guardian" language within SB 112. She stated that the "able" spouse has always been allowed to divorce the incapacitated spouse.

Ms. Roessmann stated that these three criteria must be met prior to the legal proceedings to continue:

- 1) Must be able to prove that the person is a victim of neglect, abuse or exploitation,
- 2) The person is unable to collect benefits/public assistance, and
- 3) Court must rule with a "substituted judgement."

[EXHIBIT\(juh48a05\)](#)

[EXHIBIT\(juh48a06\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 330 - 465}

Opponents' Testimony:

Kathy Coey, self, rose in opposition to SB 112. **Ms. Coey** spoke to the committee about how this matter is too personal to allow someone else to make the decision for divorce. She continued to address the committee about the stepchildren issue and the termination of insurance if allowed to divorce.

{Tape: 1; Side: B; Approx. Time Counter: 465 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 45}

David Coey, self, spoke to the committee about the problems with stepchildren in a divorce.

{Tape: 2; Side: A; Approx. Time Counter: 45 - 107}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS began with questions for Ms. Roessmann. He started by asking her if the language on Page 3, Lines 19-20, regarding the "requirement that the ward is seeking public assistance," is too narrow. **Ms. Roessmann** replied that SB 112 "needs to be written narrowly." They then discussed the "substituted judgement" language and the insertion of "in the best interests" to replace that aforementioned language.

REP. KOOPMAN initiated his questions to Ms. Roessmann regarding the addition of language, "public assistance is being denied."

Ms. Roessmann replied that the addition of that language could be good; however, she did not want SB 112 to return to the Senate for more debate.

They discussed the specifics as to how the courts would determine by "clear and convincing evidence" in what the ward would want.

REP. KOOPMAN asked Mr. Bartos what the definition of "guardian" is. **Mr. Bartos** replied that the definition is in Title 72. They continued their discussion about the insurance being terminated if allowed to divorce/separate and the division of assets.

REP. KOOPMAN then spoke with SEN. HARRINGTON about the religious aspect regarding the dissolution of marriage. **REP. KOOPMAN** suggested that the Montana change their Medicaid laws to accommodate these types of people and their problems. **SEN. HARRINGTON** stated that Medicaid laws are federal laws; therefore, Montana is not allowed to change them and that the problems exist now.

REP. MCGILLVRAY asked Mr. Barton about Page 3, Line 19 regarding "neglect" and whether financial neglect would be the sole reason for a divorce. **Mr. Bartos** replied that many steps would need to be accomplished before any divorce may occur. The **REPRESENTATIVE** inquired of Mr. Bartos whether or not anyone had ever been evicted. **Mr. Bartos** responded, "Yes, and that it is happening more often than before."

REP. NOENNIG began his questions to Ms. Roessmann regarding the language, "substituted judgement, clear and convincing evidence and in the best interests ." They had a lengthy discussion to explore the best possible language suitable for SB 112.

[EXHIBIT \(juh48a07\)](#)

REP. NOENNIG then spoke with Mr. Bartos about the situation at the Flathead Nursing Home regarding the elderly woman, the case for abandonment, the spouse living in Illinois, and the evidence of his assets.

REP. GUTSCHE asked Mr. Bartos whether or not he would support Ms. Roessmann's amendment. **Mr. Bartos** replied, "I would support the amendment, but would not like to see SB 112 go back to the Senate."

REP. CLARK noticed that a person was in the committee hearing room who could explain the Medicaid procedure for benefits.

Karlene Grossberg, Bureau Chief, Public Assistance Bureau, State of Montana, rose to explain the Medicaid procedure for receiving benefits.

Ms. Grossberg explained the Spousal Impoverishment Law to the committee members; whereas, the assets are divided, but that a large percentage of those assets are for the "at home" spouse. That spouse will also retain possession of the family home and automobile. The "rest home" spouse's assets (a large percentage) are to be applied toward the rest home's expenses with the remaining assets applied toward Medicaid benefits.

REP. CLARK questioned Ms. Williams (who was in the audience) about the county-owned nursing homes and their funding.

Kelly Williams, Administrator, Senior and Long term Care, Department of Health and Human Services, spoke to the committee about the funding of nursing homes.

REP. RICE continued with Ms. Williams and questioned her about the county-owned nursing homes and what happens when the counties do not have the funds available to help the nursing homes.

{Tape: 2; Side: A; Approx. Time Counter: 107 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 273 - 313}

Closing by Sponsor:

SEN. HARRINGTON closed the hearing on SB 112 and asked the committee, "Where will these people go when they are evicted and what type of care will they receive?"

{Tape: 2; Side: B; Approx. Time Counter: 313 - 354}

HEARING ON SB 172

Sponsor: **SEN. KELLY GEBHARDT, SD 23, ROUNDUP**

Opening Statement by Sponsor:

SEN. KELLY GEBHARDT (R), SD 23, opened the hearing on **SB 172**, Extend application of "assault with bodily fluid" to emergency responders. The **SENATOR** explained that SB 172 would expand 45-5-214, MCA to include emergency responders to the current statute.

{Tape: 2; Side: B; Approx. Time Counter: 354 - 382}

Proponents' Testimony:

Jerry Sorenson, West Valley Fire Department, rose in support of SB 172.

{Tape: 2; Side: B; Approx. Time Counter: 382 - 400}

John Semple, Montana Firefighter Association, rose in support of SB 172.

{Tape: 2; Side: B; Approx. Time Counter: 400 - 403}

Jim Smith, Montana Sheriffs and Peace Officers Association, rose in support.

{Tape: 2; Side: B; Approx. Time Counter: 403 - 424}

Jim Kembel, Montana Association of Chiefs of Police, Montana Police Protective Association, stood in support of SB 172.

{Tape: 2; Side: B; Approx. Time Counter: 424 - 436}

Opponents' Testimony: None

Informational Testimony:

Brenda Thompson, Department of Corrections, informed the committee members that she would be available for questions.

{Tape: 2; Side: B; Approx. Time Counter: 436 - 444}

Questions from Committee Members and Responses:

REP. CLARK began his questions to Mr. Smith and asked if this bill would be considered "creeping criminality" especially in reference to Page 1, Line 13. **Mr. Smith** stated that he shared the same concerns, however; with the AIDS virus and Hepatitis C, etc., being at "heightened awareness and concern," he can see why emergency responders would be included in the statute.

They continued their discussion regarding the ever-expanding list of people who could be added to the statute.

REP. GUTSCHE queried Mr. Kembel regarding the Civil Defense providers who are present at the major fires etc., that occur and if they are included in this statute. **Mr. Kembel** referred the question to Ms. Thompson. **Ms. Thompson** spoke to the difference between HB 363 and this bill, SB 172. She also reiterated the story (for the new members of the committee) of the guard at Montana State Prison who was a victim of a bodily fluid assault and the reason why this bill was initially brought forth in the 2003 session.

REP. NOENNIG and Mr. Sorenson discussed the various incidents where this statute would apply. **Mr. Sorenson** informed the committee that domestic violence calls, motor vehicle accidents and ambulance care providers could all be applicable situations.

REP. NOENNIG informed Mr. Sorenson that there is currently a statute that would apply to these situations.

{Tape: 2; Side: B; Approx. Time Counter: 444 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 185}

Closing by Sponsor:

SEN. GEBHARDT closed the hearing on SB 172 and stated, "...this bill will provide additional protection...."

{Tape: 3; Side: A; Approx. Time Counter: 185 - 229}

EXECUTIVE ACTION ON SB 181

The proxy votes for each REPRESENTATIVE are all inclusive for any amendments and bills and are to be counted as such.

(Please Note: REPS. BECKER, PARKER, LANGE, SONJU absent from the room.)

Motion: **REP. HARRIS** moved that SB 181 BE CONCURRED IN.

Motion: **REP. NOENNIG** moved that SB 181 BE AMENDED on PAGE 2, LINE 11, after the word "property," INSERT "AND WAS LAWFUL OWNER WHEN RENDERING OF SERVICE WAS PROVIDED."

Discussion:

Mr. MacMaster explained the amendment for Page 2, Line 11 to the committee members.

Vote: Motion SB 181 BE AMENDED carried unanimously by voice vote. (REPS. BECKER, PARKER, LANGE and SONJU voted by proxy vote.)

Motion: **REP. HARRIS** moved that SB 181 BE CONCURRED IN AS AMENDED.

(Please Note: REPS. PARKER and SONJU returned to the room.)

Discussion:

The committee discussed the bill as to the problems that may occur regarding the invasion of privacy when there are items left in the vehicle.

Vote: Motion that SB 181 BE CONCURRED IN AS AMENDED failed 8-10 by roll call vote with REP. DRISCOLL, REP. EVERETT, REP. HARRIS, REP. KOOPMAN, REP. LANGE, REP. NOONAN, REP. STOKER, and REP. WARD voting aye. (REPS. BECKER and LANGE voted by proxy vote.)

Motion/Vote: REP. STOKER moved that SB 181 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously.
{Tape: 3; Side: A; Approx. Time Counter: 229 - 500}

EXECUTIVE ACTION ON SB 172

Motion/Vote: REP. MCGILLVRAY moved that SB 172 BE CONCURRED IN. Motion failed 3-15 by roll call vote with REP. MCGILLVRAY, REP. PARKER, and REP. SONJU voting aye. (REPS. BECKER and LANGE voted by proxy.)

Motion/Vote: REP. STOKER moved that SB 172 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously.
{Tape: 3; Side: B; Approx. Time Counter: 0 - 75}

EXECUTIVE ACTION ON SB 67

Motion/Vote: REP. STOKER moved that SB 67 BE CONCURRED IN. Motion carried 15-3 by roll call vote with REP. CLARK, REP. KOOPMAN, and REP. SONJU voting no. (REPS. BECKER and LANGE voted by proxy vote.)
{Tape: 3; Side: B; Approx. Time Counter: 75 - 100}

EXECUTIVE ACTION ON SB 30

(Please Note: REP. KOOPMAN absent from the room.)

Motion: REP. WINDHAM moved that SB 30 BE CONCURRED IN.

Discussion:

Mr. MacMaster explained the language on Page 1, Lines 21-22, and Page 1, Line 24, as to "shall" require fingerprints for felonies.

Vote: Motion SB 30 BE CONCURRED IN carried 14-4 by roll call vote with REP. EVERETT, REP. KOOPMAN, REP. RICE, and REP. SONJU voting no. (REPS. BECKER, KOOPMAN and LANGE voted by proxy vote.)
{Tape: 3; Side: B; Approx. Time Counter: 100 - 198}

EXECUTIVE ACTION ON SB 166

Motion: REP. HARRIS moved that SB 166 BE CONCURRED IN.

Motion: REP. CLARK moved that SB 166 BE AMENDED ON PAGE 3, LINE 15 AFTER ANHYDROUS AMMONIA INSERT "WITH INTENT TO MANUFACTURE DANGEROUS DRUGS."

Discussion:

REP. CLARK and Mr. MacMaster explained the amendment to the committee members. REP. NOENNIG then proposed the word, "purpose" be inserted instead.

Without Objection, REP. CLARK, WITHDREW HIS AMENDMENT.

Motion: REP. CLARK moved that SB 166 BE AMENDED ON PAGE 1, LINE 5 AND PAGE 3, LINE 4, INSERT "FOR THE PURPOSE OF MANUFACTURING DANGEROUS DRUGS."

Discussion:

The committee discussed the new amendment as to the problems that law enforcement may face in following the language in the new amendment. Mr. MacMaster explained the precursor language to the members of the committee.

(Please Note: REPS. BECKER and KOOPMAN returned to the room; REPS. WILSON, PARKER and LANGE absent from the room.)

Substitute Motion: REP. STOKER made a substitute motion that SB 166 BE AMENDED by STRIKING SECTION 1.

Discussion:

The committee discussed the language regarding theft, penalties, common sense, dismissal of charges and "other" substances relative to SB 166.

(Please Note: REP. HARRIS absent from the room.)

Vote: Motion that SB 166 BE AMENDED with SUBSTITUTE MOTION failed 7-11 by voice vote with REP. BECKER, REP. EVERETT, REP. KOOPMAN, REP. NOENNIG, REP. NOONAN, REP. SONJU, and REP. STOKER voting aye. (REPS. WILSON, PARKER, HARRIS, and LANGE voted by proxy vote.)

(Please Note: REP. HARRIS returned to room.)

Vote: Motion SB 166 BE AMENDED carried 11-7 by voice vote with REP. DRISCOLL, REP. EVERETT, REP. HARRIS, REP. MCGILLVRAY, REP. NOONAN, REP. PARKER, and REP. WARD voting no. (REPS. WILSON, PARKER, LANGE voted by proxy vote.)

(Please Note: REP. HARRIS absent from the room.)

Motion/Vote: REP. NOENNIG moved that SB 166 BE AMENDED to STRIKE LANGUAGE on PAGE 4, LINES 10-15. Motion carried unanimously by voice vote. (REPS. HARRIS, PARKER, LANGE, and WILSON voted by proxy vote.)

Motion/Vote: REP. NOENNIG moved that SB 166 BE CONCURRED IN AS AMENDED. Motion carried 17-1 by roll call vote with REP. KOOPMAN voting no. (REPS. HARRIS, LANGE, PARKER, and WILSON voted by proxy vote.)

{Tape: 3; Side: B; Approx. Time Counter: 198 - 300}

ADJOURNMENT

Adjournment: 12:32 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh48aad0.PDF](#))